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TRA DOCKET ROOM
November 23, 2004

Guy M. Hicks
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VIA HAND DELIVERY

Hon. Pat Miller, Chairman
Tennessee Regulatory Authority
460 James Robertson Parkway
Nashville, TN 37238

Re: *Petition to Establish Generic Docket to Consider Amendments to
Interconnection Agreements Resulting from Changes of Law*
Docket No. 04-00381

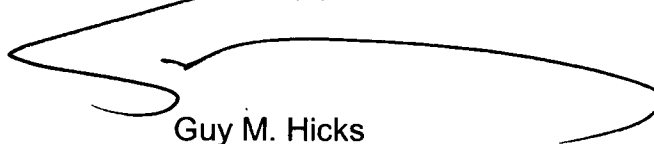
Dear Chairman Miller:

Enclosed are the original and fourteen copies of BellSouth's *Emergency Motion to Establish Schedule in Generic Change of Law Proceeding*.

Please note that the *Emergency Motion* includes a request for the matter to be placed on the Authority's next scheduled Agenda Conference on December 13, 2004.

Copies of the enclosed are being provided to counsel of record.

Very truly yours,



Guy M. Hicks

GMH.ch

BEFORE THE TENNESSEE REGULATORY AUTHORITY
Nashville, Tennessee

In Re: *Petition to Establish Generic Docket to Consider Amendments to
Interconnection Agreements Resulting from Changes of Law*

Docket No. 04-00381

**EMERGENCY MOTION TO ESTABLISH SCHEDULE IN
GENERIC CHANGE OF LAW PROCEEDING**

BellSouth Telecommunications, Inc. ("BellSouth") files this motion, on an emergency basis, to establish the schedule for a generic "change of law" proceeding to determine what changes recent decisions from the Federal Communications Commission ("FCC") and the United States Court of Appeals for the District of Columbia Circuit ("DC Circuit") require in existing approved interconnection agreements between BellSouth and competitive local exchange carriers ("CLECs") in Tennessee. BellSouth respectfully shows the Tennessee Regulatory Authority ("Authority" or "TRA") as follows:

As BellSouth noted in its pleading, filed on October 29, 2004, to establish this docket, there are hundreds of interconnection agreements that have been filed and approved in Tennessee.¹ Consequently, the most efficient manner in which to address the necessary changes required by these long-awaited decisions from the FCC and the DC Circuit is the use of a single generic proceeding. BellSouth worked with various CLECs and CLEC associations to

¹ CompSouth filed its response on November 22, 2004, moving to dismiss the petition BellSouth will file a formal response to CompSouth's motion. The motion grossly distorts the actions of other Commissions. The *truth* is that Georgia, South Carolina *and* North Carolina have each opened a generic docket, as BellSouth sought. While North Carolina has not yet set a schedule, the South Carolina Commission voted to hear the matter in January

try to create an agreed efficient approach to this proceeding. Obviously, BellSouth was not privy to the discussions held by the members of CompSouth. BellSouth understands, however, that at least one carrier did not object in principle, to a generic proceeding and understood that there were other carriers who understood the burdens that proceeding with multiple hearings would cause. BellSouth clearly understood that there was not a consensus among all the carriers supporting proceeding with a generic hearing; otherwise they would have presumably joined in the filing. BellSouth made its own filing as a result of those conversations. Whatever their opinions regarding a generic proceeding, the CLECs in Tennessee and elsewhere certainly are well aware of BellSouth's decision to seek the opening of generic change-of-law dockets throughout its region as a means of implementing the changes resulting from the FCC and DC Circuit Opinions.

As BellSouth explained in its *Motion* to establish the docket, time is of the essence. The first six month period established by the FCC in its *Interim Rules Order*, will expire in March, 2005, or earlier in the event that the FCC's final unbundling rules become effective prior to that date. For that reason, BellSouth respectfully requested that the Authority accept its Petition, establish a procedural schedule, and hear this Petition in an expeditious matter so that at the appropriate time, the necessary modifications to existing interconnection agreements can be made without further delay.

This matter is now even more pressing in Tennessee. In the now-pending Joint CLEC Arbitration (Docket No. 04-00046), the Hearing Officer has ruled that supplemental issues arising from the FCC and DC Circuit decisions will not be heard in that arbitration. It was clear from the Hearing Officer's discussion of this issue, during the recent status conference in that arbitration, that the availability of a Tennessee generic docket, in which to address these issues, influenced the decision to exclude those issues from the arbitration.

If no generic docket is scheduled ***and*** the issues are excluded from the arbitration, then the TRA will face a serious problem: specifically, without addressing these supplemental issues in a generic proceeding, the Tennessee arbitration will result in contracts with those CLECs, which cannot be adopted by other CLECs, and which do not comply with these most recent federal decisions. Absent resolution of the supplemental issues in the generic docket, the TRA will be in the untenable position of approving an interconnection agreement that, at the very time it is approved, violates federal law and provides the arbitrating CLECs with the opportunity to obtain an agreement that is not available to other CLECs. Consequently, it is particularly urgent that the TRA set a schedule for the generic proceeding immediately.

Based on the issues presented to date, BellSouth believes that only a one-day hearing may be necessary for this generic proceeding. This matter is overwhelmingly a matter of legal argument and not a matter regarding which substantial witness testimony will be needed. BellSouth anticipates that it will

use no more than two witnesses in this proceeding. BellSouth has already provided a proposed issues matrix for this proceeding.

To the extent there are concerns regarding the still-pending FCC Final Rules, which are anticipated in December, BellSouth urges the Authority to proceed to set the schedule even though those Rules have not yet been announced. BellSouth will urge the TRA in this proceeding to address the Final Rules issues such that, when the Final Rules are announced, the requirements of these rules will be incorporated automatically without an additional change of law proceeding. In this way, all CLECs will be treated in a nondiscriminatory and fair fashion and no party will suffer further delay.

As BellSouth will discuss further in its response to the CompSouth *Motion*, the best way in which to proceed is to resolve these issues in a generic proceeding. It will save the TRA's administrative resources and avoid piecemeal litigation and successive arbitrations of these same issues. A generic proceeding will also allow all interested parties to participate rather than limiting input to the TRA to that provided by the four CLECs and BellSouth. The Hearing Officer in the arbitration made a reasoned, and in Bellsouth's view, correct decision to exclude these issues from the arbitration in order to address them in the generic proceeding. In the event that the Authority does not move to set a schedule on an expedited basis for the generic proceeding, however, the Authority will need to revisit the Hearing Officer's logical decision to exclude those issues from the Arbitration (Docket No 04-00046) in order to avoid approval of an

interconnection agreement, illegal on its face, which does not comport with the *Triennial Review Order*, the *Interim Rules Order*, or the DC Circuit Court *Opinion*.

For these reasons, BellSouth respectfully urges the Authority to adopt the schedule proposed on Attachment A to this motion. BellSouth also requests that the Authority schedule this *Motion* and the CompSouth motion to dismiss to be argued by counsel and deliberated by the panel during the December 13 Agenda Conference in order to ensure that this matter is resolved before further time passes in the arbitration.

Respectfully submitted,

BELLSOUTH TELECOMMUNICATIONS, INC.

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Nashville, Tennessee

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BELLSOUTH'S PROPOSED PROCEDURAL SCHEDULE

BellSouth Telecommunications, Inc. ("BellSouth") files this *Proposed Procedural
Schedule*.

December 20, 2004	Discovery Requests Served
December 20, 2004	Protective Order Filed with Hearing Officer
January 7, 2005	Responses to Discovery Requests served
January 14, 2005	Motion to Compel Responses to First Round of Discovery (if necessary)
January 21, 2005	Supplemental Discovery Responses required to be provided pursuant to any order granting motion to compel (if applicable)
January 31, 2005	Direct Testimony (all parties)
February 9, 2005	Rebuttal Testimony (all parties)
Week of February 15, 2005	One Day Hearing before the Panel
10 days from Transcript	Post-Hearing Briefs

Respectfully submitted,

BELLSOUTH TELECOMMUNICATIONS, INC.

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CERTIFICATE OF SERVICE

I hereby certify that on November 23, 2004, a copy of the foregoing document was served on the following, via the method indicated:

☐ Hand
☐ Mail
☐ Facsimile
☐ Overnight
☒ Electronic

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